IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6168 OF 2004

Smt. Dipti D. Prabhu ... Petitioner

Vs.

Sudam M. Hande & Ors. ... Respondents

Mr. E.A. Sasi for the petitioner.

Mr. A.S. Karwade for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 12TH APRIL, 2005.

P.C.:-

1. The petitioner is original defendant 2. She has preferred Appeal No.314 of 2000 in Interim Notice No.3100 of 1999 in R.A.D. Suit (St.) No.1334 of 1999. That appeal was dismissed for default on 30/8/2003. Defendant 2 then took out Misc. Notice No.814 of 2003 for setting aside the order of dismissal of the appeal. That notice was discharged and, hence, this writ petition.

2. I have heard Mr. Sasi, the learned counsel appearing for defendant 2. He submitted that defendant 2 is a widow. At the relevant time, she was unwell and, in the circumstances, the appeal could not be prosecuted. He submitted that in the interest of justice, the appeal be restored.

3. In the normal circumstances, the court would be

liberal in restoring the appeal. But, in my opinion, in this case, the lower appellate court has rightly discharged the notice. It appears that the appeal was adjourned on the application of defendant 2 right from 27/8/2001. Thereafter, applications are given on 6/9/2001, 15/1/2002, 12/2/2002, 10/4/2002, 6/6/2002, 15/6/2002, 29/6/2002 and 4/9/2002. Thereafter the appeal was dismissed. On 25/9/2002, an application for setting aside the order of dismissal was filed. The advocate, who appeared for defendant 2 stated that he will file the written statement. That prayer was granted. Thereafter, on 20/2/2003, 11/3/2003, 2/7/2003, 16/7/2003 and 1/8/2003 again applications for adjournment were filed. This clearly indicates that defendant 2 and her lawyer are totally careless and negligent. It is also pertinent to note that from 2/7/2003, sufficient opportunity was given to the advocate for defendant 2 to file written statement and, therefore, her case that on 30/8/2003 her advocate was busy and, therefore, he could not attend the court, cannot be accepted. The written statement ought to have been filed earlier when sufficient time was given to defendant 2. In the circumstances, this is not a case where the appeal can be restored. There is no merit in the petition. The petition is rejected. However, during the pendency of the suit, respondent 1 - Sudam M. Hande should not create any third party interest in the suit premises. He will not, in any way, encumber the suit premises. The learned counsel for respondent 1 says that respondent 1 will not create any third party interest in

the suit premises. He says that an affidavit to that effect will be filed in the trial court within three weeks from today. The said statement is recorded.

Affidavit be filed accordingly.

(SMT. RANJANA DESAI, J.)